

1 **Timothy J. Bernasek, WSBA No. 43604**  
Email: [tbernasek@dunncarney.com](mailto:tbernasek@dunncarney.com)  
2 **John R. Barhoum, WSBA No. 42776**  
Email: [jbarhoum@dunncarney.com](mailto:jbarhoum@dunncarney.com)  
3 Dunn Carney Allen Higgins & Tongue LLP  
851 SW Sixth Avenue, Suite 1500  
4 Portland, OR 97204-1357  
Telephone: 503-224-6440  
5 Fax: 503-224-7324

**Honorable Rosanna M. Peterson**

6 Attorneys for Defendants Western Range Association

7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF WASHINGTON

10 ELVIS RUIZ FRANCISCO )  
JAVIER, CASTRO and EDUARDO )  
11 MARTINEZ, )  
12 Plaintiffs, )  
13 v. )  
14 MAX FERNANDEZ and ANN )  
FERNANDEZ, a Marital )  
15 community; and WESTERN )  
RANGE ASSOCIATION, a foreign )  
16 nonprofit organization, )  
17 Defendants. )

Case No. 2:11-cv-03088-RMP

DEFENDANT WESTERN  
RANGE ASSOCIATION'S  
REPLY IN SUPPORT OF ITS  
CONCISE STATEMENT OF  
MATERIAL FACTS IN  
SUPPORT OF ITS MOTION FOR  
SUMMARY JUDGMENT

18

19 Pursuant to Local Rule 56.1, Defendant Western Range Association ("WRA")  
20 submits this Reply in Support of its Concise Statement of Material Facts in Support  
21 of its Motion for Summary Judgment ("Concise Statement").

22 1. In support of Paragraph 1 of WRA's Concise Statement, WRA submits the

DEF. WRA'S REPLY IN SUPPORT OF ITS CONCISE STATEMENT OF MATERIAL  
FACTS IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT - 1

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DUNN CARNEY ALLEN HIGGINS & TONGUE LLP

Attorneys at Law  
851 SW Sixth Avenue, Suite 1500  
Portland, OR 97204-1357  
503.224.6440 / Fax: 503.224.7324

1 following reply:

2 WRA did not anticipate that Plaintiffs would object to WRA's status as a non-  
3 profit or its purpose, both of which are matters of public record. To the extent that  
4 additional support is required, WRA attaches the Articles of Incorporation and  
5 Washington Secretary of State Registration Detail for Western Range Association.  
6 Exhibit 6 to Second Declaration of Timothy J. Bernasek (Articles of Incorporation);  
7 Exhibit 7 to Second Declaration of Timothy J. Bernasek (Secretary of State  
8 Registration Detail). These documents speak for themselves regarding WRA's status  
9 and purpose.

10 2. In support of Paragraph 3 of WRA's Concise Statement, WRA submits the  
11 following reply:

12 WRA objects to Plaintiffs' response. WRA has made clear that it simply  
13 facilitates the H-2A process for its members. *See* Dkt. 162-1, Richins Depo., at 77,  
14 117 (describing WRA as the vehicle that brings the workers in and assists with H-2A  
15 compliance). To the extent that Plaintiffs assert that WRA's role was anything more  
16 than a facilitator of the H-2A process, WRA objects to Plaintiffs' characterization.  
17 Further, Plaintiffs themselves sought out work opportunities with WRA and willingly  
18 entered into the H-2A process, as described directly below.

19 3. In support of Paragraph 4 of WRA's Concise Statement, WRA submits the  
20 following reply:

21 WRA objects to Plaintiffs' response. Plaintiff Castro testified that his cousin  
22 told him about working for WRA, and at his direction, his cousin provided WRA's

1 recruiter with his information. Dkt No. 133-2, Castro Depo., at 61-63. Similarly,  
2 Plaintiff Martinez testified that, at his direction, his brother-in-law provided WRA's  
3 recruiter with his information. Dkt No. 133-7, Martinez Depo., at 46-47. Finally,  
4 Plaintiff Ruiz stated simply that he "signed up" with the recruiter. Dkt. 133-1, Ruiz  
5 Depo., at 17. Thus, each Plaintiff affirmatively expressed an interest in working in  
6 the United States to WRA's recruiter. WRA has demonstrated that its recruiters were  
7 not employees of WRA, and simply provided WRA with a list of names of herders  
8 that were interested in coming to work in the United States. Dkt No. 162-2, Peters  
9 Depo., at 44. As explained above, WRA has made clear that it simply facilitates the  
10 H-2A process for its members. *See* Dkt. 162-1, Richins Depo., at 77, 117.

11 4. In support of Paragraph 5 of WRA's Concise Statement, WRA submits the  
12 following reply:

13 WRA objects to Plaintiffs' response. As stated above, WRA has made clear  
14 that it simply facilitates the H-2A process for its members. *See* Dkt. 162-1, Richins  
15 Depo., at 77, 117. While WRA initially covers the cost of transporting Plaintiffs to  
16 the United States, member ranches reimburse these transportation costs to WRA. Dkt  
17 No. 162-2, Peters Depo., at 95-97.

18 5. In support of Paragraph 6 of WRA's Concise Statement, WRA submits the  
19 following reply:

20 WRA objects to Plaintiffs' response. Plaintiffs object to WRA's  
21 characterization that Plaintiffs worked as "shepherders" for Fernandez. Dkt No. 165  
22 at 4. WRA relies on the pre-employment agreement and application for Plaintiffs in

1 support of its assertion that Plaintiffs worked as sheepherders. Dkt No. 146-6 (Pre-  
2 employment agreement); Dkt No. 146-5 (Application Agreement). The issue of the  
3 type of work performed by Plaintiffs while they were employed by Fernandez is  
4 outside the scope of WRA's briefing.

5 6. In support of Paragraph 7 of WRA's Concise Statement, WRA submits the  
6 following reply:

7 WRA objects to Plaintiffs' response. Plaintiffs' objection to this statement is  
8 circuitous, contradictory, and contains improper legal arguments. Plaintiffs' admit  
9 that the Department of Labor sets the wages for H-2A workers. 20 C.F.R. 655.120;  
10 *see also* Dkt No. 146-14 (Employment Agreement); *see also* US DOL Report, Dkt  
11 No. 133-4 at 3. However, Plaintiffs contend that since WRA requires its members to  
12 pay the wage set by the DOL, WRA somehow determines the wage rate for Plaintiffs.  
13 Plaintiffs' argument is nonsensical – DOL sets the wage rate for Plaintiffs. WRA's  
14 members pay that rate. WRA does not have any control over the rate. In fact,  
15 WRA's representative testified that a member could pay more than the required rate,  
16 he just couldn't pay less or he would be in violation of DOL regulations. Dkt No.  
17 162-1, Richins Depo., at 176.

18 7. In support of Paragraph 8 of WRA's Concise Statement, WRA submits the  
19 following reply:

20 WRA objects to Plaintiffs' response. WRA issued a comprehensive response  
21 to Plaintiffs' objections, and refers the Court to the response for additional factual  
22 support of WRA's position. Dkt No. 163. As relevant to this Court's inquiry, control

1 refers to the day-to-day control exercised by an employer over an employee. WRA  
2 has clearly demonstrated that it did not exercise control over Plaintiffs in any  
3 meaningful way. Dkt No. 163.

4 8. In support of Paragraph 10 of WRA's Concise Statement, WRA submits  
5 the following reply:

6 WRA objects to Plaintiffs' response. WRA has fully responded to Plaintiffs'  
7 hearsay argument in its contemporaneous briefing filed with the Court today, and  
8 directs the Court to its briefing in response. In response to Plaintiffs' factual  
9 arguments regarding the report, the report clearly demonstrates that the DOL  
10 analyzed the economic realities of the relationship between WRA, Fernandez, and the  
11 workers, and found that each factor in the *Torres-Lopez* case weighed against finding  
12 that WRA was a joint employer of Plaintiffs. Dkt No. 133-4, US DOL Report, at 3.

13 Dated: January 28, 2013.

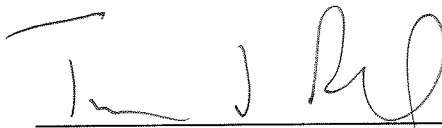
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DUNN CARNEY ALLEN HIGGINS & TONGUE LLP

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Timothy J. Bernasek, WSBA No. 43604

19

Email: [tbernasek@dunncarney.com](mailto:tbernasek@dunncarney.com)

20

John R. Barhoum, WSBA No. 42776

21

Email: [jbarhoum@dunncarney.com](mailto:jbarhoum@dunncarney.com)

22

Attorneys for Defendant Western Range Association

Trial Attorney: Timothy J. Bernasek  
WSBA No. 43604

**CERTIFICATE OF SERVICE**

I hereby certify that on January 14, 2013, I caused the foregoing document to be electronically filed with the Clerk of the Court using the CM/ECF system and caused it to be served by mail to the following:

Michele Besso : [micheleb@nwjustice.org](mailto:micheleb@nwjustice.org)

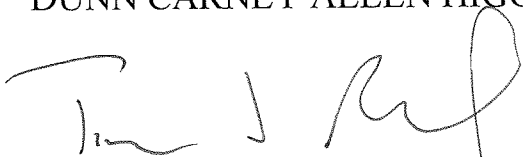
Weeun Wang : [wwang@farmworkerjustice.org](mailto:wwang@farmworkerjustice.org)

Gary E. Lofland : [glofland@glofland.net](mailto:glofland@glofland.net)

John Jay Carroll : [jcarroll@halvorsonNW.com](mailto:jcarroll@halvorsonNW.com)

Dated: January 28, 2013.

DUNN CARNEY ALLEN HIGGINS & TONGUE LLP



Timothy J. Bernasek, WSBA No. 43604

Email: [tbernasek@dunncarney.com](mailto:tbernasek@dunncarney.com)

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